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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 1252

STATE OF TENNESSEE, ex rel, CHESTER D. WYRICK, A. W. LeQUIRE, T. H. BROWN, JR., RALPH CAUGHRON, MARY E. SMITH, ARCHIE CHAPMAN, ELIZABETH REDWINE and RAY PATTY,

*Petitioners*,

*v.*

CITY OF MARYVILLE, a Municipal Corporation, T. NED LEE, JOE. MONTGOMERY, JR., LUKE M. KIDD, and S. B. SHIELDS,

*Respondents*.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This is a suit involving the validity of the annexation by Respondents of an area adjacent to City of Maryville pursuant to the powers granted by the General Assembly of the State of Tennessee, the salient portions of which appear in Tennessee Code Annotated, Sections 6-309 and 6-310, to-wit:

"6-309. Annexation by ordinance. — A municipality when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole, provided said ordinance shall not become operative until thirty (30) days after final passage thereof.

"Provided, however, that before any territory more than one-fourth (1/4) square mile in area or having a population of more than five hundred (500) persons may be annexed under this section, the governing body of the municipality shall adopt a plan of service setting forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory proposed to be annexed. Provided, further, that before any such plan of service shall be adopted, it must have been submitted to the local planning commission, if there be such, for study and a written report, to be rendered within ninety (90) days after such submission, unless by resolution of the governing body a longer period is allowed. ..."

Tennessee Code Annotated 6-309
Vol. 2, P. 241

"6-310. Quo warranto to contest annexation ordinance. —Any aggrieved owner of property lying within territory which is the subject of an annexation ordinance

prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with §§6-308—6-320 and chapter 28 of title 23, to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law.

"If more than one (1) suit is filed, all of them shall be consolidated and tried as one (1) in the first court of appropriate jurisdiction in which suit is filed. Suit or suits, shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality. Should the court find the ordinance to be unreasonable, an order shall be issued vacating the same. In the absence of such finding an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

"If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same; otherwise, it shall become operative forthwith by court order and shall not be subject to contest or attack in legal or equitable proceeding for any cause or reason, the judgment of the appellate court being final."

Tennessee Code Annotated 6-310
Vol. 2, P. 244

## I.

### There was no denial of right to trial by jury.

(Petitioners' Questions 1. and 2.)

(a) Petitioners demanded and were granted a trial by jury.

(b) Petitioners made no objection to the issues submitted to the jury nor to the omission of any issue.

(c) The only material issue submitted to the jury, which is admitted to be such by Petitioners (Petitioners' Brief, pp. 7-8) is Issue 1 relative to the sufficiency of the description of the annexed area which issue was answered by the jury in the affirmative. (Petitioners' Appendix C)

(d) The court does not substitute its discretion or judgment as to the advisability or propriety of annexation for that of the legislative body of the city and it does not review the legislative discretion. The court's consideration of the question shall be " .... whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality" (Tennessee Code Annotated 6-310, Vol. 2, p. 244) and in that consideration the court is confined to the determination of whether there exists a sufficient showing of reasonableness to make that question, at the least, a fairly debatable one, and if there is such, then the discretion of the legislative body is conclusive.

Morton v. Johnson City (1960)
206 Tenn. 411, 333 S.W.2d 924

The evidence overwhelmingly preponderated in favor of Respondents on the question of "whether the proposed annexation be or be not unreasonable" and it then became the duty of the trial judge to withdraw the issue from the jury, find in favor of the legislative body which had passed the ordinance and decree the ordinance of annexation valid.

Morton v. Johnson City, supra
State v. Mayor, et al, Morristown
(1966) 218 Tenn. 593, 404 S.W.2d 798

## II.

**The trial court did not fail to permit or refuse the Petitioners an evidentiary hearing on the municipal ordinance.**

(Petitioners' Question 3)

(a) There is nothing in the Record to support this contention of Petitioners nor was there any such understanding.

(b) At the trial, Petitioners called as their witness the Recorder of the City who answered all questions asked him by Petitioners regarding the enactment of the annexing ordinance without objection by Respondents' counsel and without interference by the Chancellor. (Record, pp. 85-127)

(c) After the hearing of proof in chief for nearly three days and consisting of two hundred sixty-three pages of testimony on behalf of Petitioners, including some officials and employees of the City, the Petitioners rested their case in chief. (Record, pp. 1-263) Later, on the 4th day of the trial, after introducing further evidence, Petitioners rested their case. (Record, p. 412) As a further fact that Petitioners were never denied the opportunity

of introducing proof, in a colloquia among the Chancellor and Counsel, the counsel for Petitioners complained that Respondents were unduly extending the trial by "bringing in proof and proof" and "we would be here all through July." (Record, pp. 366-367)

## III.

**The ordinance does not deny the residents of the annexed area the immunities and privileges guaranteed by the 14th Amendment of the Constitution of the United States.**

(Petitioners' Question 4)

(a) The residents of the annexed area, otherwise qualifying as to age, etc., in like manner as other residents of the City, could have voted and run for office in the 1967 and also in the 1969 City elections, had not the suit of Petitioners been filed enjoining the annexation.

(b) The rights, privileges and immunities of Petitioners and other residents of the annexed area are protected by the provisions of Tennessee Code Annotated, Section 6-315, to-wit:

> "6-315. Rights of residents of annexed territory. — Residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body."
>
> Tennessee Code Annotated 6-315
> Vol. 2, P. 248

(c) The ordinance of annexation is not required to contain, as a condition precedent to its validity, any provisions setting up the rights mentioned in the above code section, because the presumption is that the governing body of the City will do its duty and there is certainly no presumption that it will not do its duty.

> State ex rel v. Mayor, et al, Morristown (1966) 218 Tenn. 593, 602, 404 S.W.2d 798

(d) On the effective date of the annexing ordinance following the judgment of the Supreme Court of Tennessee the City began furnishing and has continued to furnish the annexed area certain services in accordance with the schedules adopted in connection with the annexation and the governing body has put into effect with respect to the annexed area all charter provisions relating to representation on the governing body, so that residents of and persons owning property in the annexed territory now have the rights and privileges of citizenship in accordance with the provisions of the annexing municipality's charter as though such annexed territory had always been a part of the City of Maryville. (See affidavit of Lynn L. Shasteen, Recorder of City of Maryville, Respondents' Appendix A, page 9).

(e) The annexing statutes do not require, nor should they require, that immediately upon annexation the city call a special election in contravention of its charter provisions in order to give new residents a governing voice in affairs of the municipality. There must be some period of time intervening between the effective date of annexation and a subsequent election of city officials and that period will vary in each situation.

(f) The annexation of lands to a city or town is purely a political matter, entirely within the power of the legislature of the State to regulate.

Deane Hill Country Club, Inc. v. City of Knoxville (1967), 379 F.2d 321 (6th Cir.), cert. denied, 389 U.S. 975

## IV.

## CONCLUSION

Respondents have followed the time schedule for supplying services to the annexed territory without deriving any revenues directly from the property owners in the area in the form of property taxes, which property owners within the City but outside the annexed territory have been compelled to pay such taxes. The protracted litigation by Petitioners has placed the Respondents in the difficult position of determining how and when to integrate the new with the old of the City of Maryville in an orderly fashion.

For the reasons set forth above, the Petition For Certiorari should be denied.

Respectfully submitted,

JOHN C. CRAWFORD, JR.,
Post Office Box 368,
Maryville, Tennessee, 37801,

Other Counsel:

ROY D. CRAWFORD,

*Counsel for Respondents.*

[fol. 1]

# APPENDIX A

## AFFIDAVIT

Lynn L. Shasteen, being first duly sworn, states that he is the duly appointed Recorder of the City of Maryville, Tennessee; that he knows of his own personal knowledge the following stated facts relative to the area annexed to the City of Maryville, which annexation became effective November 6, 1969, and as to services furnished the residents and property owners of the area by the city:

1. Police protection was provided immediately with the effective date of annexation on November 6, 1969.

2. Fire protection was provided immediately with the effective date of annexation from a newly constructed and equipped modern fire station located especially to serve the annexed area.

3. Water service was provided on the effective date of annexation for domestic, commercial and industrial use under city rates which are lower than rates charged for users outside the corporate limits.

Forty-three fire hydrants have already been installed and put in use in the annexed area.

4. Sewer service—a study of sewer requirements of the annexed area has been completed and steps have already been taken to complete the financing of sewer extensions in the area.

5. Carbage collection for the entire annexed area was started approximately ten days after the effective date of annexation.

6. Streets—cleaning and emergency maintenance of the streets in the annexed area was started on the effective date of annexation.

6.15 miles of streets in the annexed area have already been resurfaced at a cost to the city of $75,314.10. Street signs have already been installed in the area.

[fol. 2] 7. Street lighting—the equipment for street lighting has been purchased and a portion of it has already been installed.

8. Recreation—all recreational facilities of the city were made available to the residents of the annexed area immediately upon the effective date of annexation including a new, large park near the annexed area. A modern municipal swimming pool and park will be completed near the annexed area within two months which will be available to the residents.

9. Schools—a modern city grammar school has been completed immediately adjacent to the annexed area. Residents of the annexed area have been permitted by the city to send their children to the city schools during the 1969-1970 school year without paying the fees charged non-residents of the city even though the effective date of annexation was more than two months after the start of the school year.

10. No property taxes will be collected by the city from the property owners in the annexed area until September 1, 1970.

11. No municipal election has occurred since the effective date of annexation, but on January 20, 1970, Ordinance No. 1000 was enacted by the city placing the annexed area in an existing ward of the city and all residents of the

annexed area if otherwise qualified can hereafter vote in any municipal election in the same manner as can residents of the rest of the city.

Witness my hand this 17th day of March, 1970.

/s/ LYNN L. SHASTEEN
Lynn L. Shasteen
Recorder of the City of Maryville,
Tennessee

Subscribed and sworn to before me, this 17th day of March, 1970.

/s/ Roy D. Crawford
Notary Public

My commission expires:
January 21, 1973.